Chapter III

CITIZENSHIP

Citizenship based on Jus Sanguinis or Jus Soli - After passing the objectives resolution the other important task before the Constituent Assembly was to frame the citizenship rules. That was a difficult question indeed. In the Nehru Report a 'citizen' was defined as 'one who, being a subject of the crown, carried on business or resides in the territories of the commonwealth' of India. But that was too wide a definition to be adopted. The framers of the Indian Constitution, therefore, studied the citizenship rules of the other countries of the world. In the continental countries citizenship is based upon race and is called Jus Sanguinis. Whereas in the Anglo-American system it is based upon birth and is called Jus Soli. It was almost absurd to adopt the principle of Jus Sanguinis in India as that had always been the bone of contention between the two major political parties of India and it was very difficult to define Indian Nationality. Therefore the Anglo-American system appealed most and the Advisory Committee on Minorities, Fundamental Rights etc. defined the citizen of India as "Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union." It was according to Article XIV of the Constitution of the U.S.A. (1868). But this definition was also too wide in its scope and not even exhaustive. Therefore, while moving clause 3 in the Constituent Assembly on 29th April, 1947, Sardar Vallabhbhai Patel also recommended the addition of the following words: "Further provision governing Union Citizenship may be made by the laws of the Union." An honorable member pointed out that their definition was too wide to include any foreigner born in this country. However, Sri K. M. Munshi

1. Sir Shafee at Ahmad Khan: The Indian Federation, p. 132.
tried to explain that, unless the child born of a foreigner was 'subject to the jurisdiction of' the Government of India, he could not claim Indian Citizenship. The President of the Constituent Assembly was not satisfied with the explanation and observed that the term 'subject to the jurisdiction of' did not include allegiance.\(^1\)

Sir Alladi Krishnaswami Ayyar\(^2\) accepted the position and said that 'subject to jurisdiction of' excludes children born of foreign ambassadors from acquiring Indian Citizenship. But otherwise, he boldly admitted, even if a foreigner was born here he would be an Indian Citizen. However, there was nothing to be perturbed about it. Political rights were distinct from civic rights and Parliament might not grant political rights to foreign citizens in India. But it was very difficult to distinguish civic rights from political rights and Sri M. Ananthasayanam Ayyangar\(^3\) referred to clause 4 of the Report which said "The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex." Thus it granted fundamental rights to all citizens without discrimination. He further observed that a foreigner might be an Indian citizen and he would also be a citizen of his motherland. His allegiance to this country would always be doubtful. Hence, Mr. Jagat Narayan Lal\(^4\) suggested that some time limit for domicile in India after the pattern of the Irish Constitution was essential. Though Sir Alladi Krishnaswami Ayyar\(^5\) observed that it was not possible to frame an exhaustive definition of citizenship and it should be accepted for the time being, the House was not prepared to accept a vague definition and wanted to have a specific clause. Sardar Vallabhbhai Patel\(^6\) observed that, in order to remove all these difficulties, the following addition was made - "further provision governing union citizenship may

---

1. Ibid, p. 401.  
2. Ibid, p. 401.  
be made by the law of the Union. He was not satisfied with the House commenting on every word and raising legal controversies. The President, however, saved the House from an embarrassing position and objected that the proviso would not improve matters because 'further' meant in addition to and not in modification of. Therefore that would not in any way take away from the amplitude of the clause as it was in the first part of it.

The clause was, therefore, referred to an ad-hoc committee consisting of:

1. Sri S. Varada Chariar
2. Sri Alladi Krishnaswami Ayyar
3. Sri B. L. Mitter
4. The Hon'ble Dr. B. R. Ambedkar
5. Sri K. N. Munshi
6. Dr. K. N. Katju
7. Dr. Bakshe Tekchand

This Committee redrafted the clause in the following terms:

"Every person born in the Union and subject to its jurisdiction; every person either of whose parents was, a citizen of the union and every person naturalised in the Union; shall be a citizen of the Union."

**Partition of the Country and Citizenship rules** - When this clause came for consideration on the 2nd May, 1947, further problems were created by the proposed partition of the country. Sri K. Sanathanar pointed out that if the proposed partition took place, a man born in Sind would become an alien and it would be very difficult for him to acquire Indian citizenship for no fault of his own. He, therefore, moved an amendment that the following clause be added at the end of the first paragraph: "Every person born or naturalised in India before the commencement of the

1. Ibid, pp 408 and 409.
2. Note on the Provision Relating to Citizenship through various stages of its consideration in the Constituent Assembly and its Committees: Vide Papers In The President's Secretariat.
Union and subject to its jurisdiction shall be a citizen of the Union." Sardar Vallabhbhai Patel¹ opposed the amendment that it should be considered at the stage when finality was reached in regard to these matters. But Sri C. Rajagopalachari² and Mr. R. K. Sidhwa³ insisted upon the issue being discussed as a large portion of India's population was being debarred from being Indian citizens automatically. Sir Alladi Krishnaswami Ayyar⁴ and Dr. B. R. Ambedkar⁵ realized the importance of the point raised by Mr. Santhanam and the clause was sent back to the committee for further consideration.

But with the proposed partition of the country a large number of problems cropped up. One such problem was that of married women. Sri D. P. Khaitan sent a letter to the Secretary, Constituent Assembly, on 23rd June, 1947⁶ viz. "In the definition of citizenship, I think, it should include that a woman on being married to a citizen of India will automatically become such a citizen. I think generally, it is the law in other countries also. But whether that be or not, on India being partitioned, I can visualise that there will be a large number of marriages between citizens of India and citizens of Pakistan. It may be argued that the wife may be naturalised. But the point applies to lacks of people, most of whom would be illiterate and most other will not have the knowledge as to what citizenship implies and the disqualifications attaching to foreigners and will further be too lazy to undergo through the procedure of naturalization⁷. In his letter dated the 30th June, 1947 Prof. Ghanshyam J. Shivadasani⁸ posed several questions. He wanted to know that if a person, living in Pakistan, decide to continue his Indian citizenship, would it be necessary for him to leave Pakistan? Could he not con-

² Ibid, p. 523.
³ Ibid, p. 524.
⁴ Ibid, p. 525.
⁵ Ibid, p. 527.
⁶ Vide Papers In The President's Secretariat.
⁷ Ibid
tinue to stay there as an alien? If he was allowed to remain as alien what would be his rights? Whether he would be allowed to hold immovable property there?

Pandit Jawaharlal Nehru considered these questions and on the 4th July, 1947, he submitted a "memorandum on the Indian Constitution" on behalf of the Union Constitution Committee.¹ Here citizenship was defined as follows:

1. Citizenship - At the date of commencement of this constitution every person domiciled in the territories subject to the jurisdiction of the federation:

   (a) Who has been ordinarily resident in those territories for not less than five years immediately preceding that date, or

   (b) Who, or whose parents, or either of whose parents, was or were born in India, shall be a citizen of the Federation.

   Provided that any such person being a citizen of any other State may, in accordance with Federal Law, elect not to accept the citizenship hereby conferred.

Explanation - For the purpose of this clause 'Domicile' has the same meaning as in the Indian Succession Act, 1925.

2. After the commencement of this constitution:

   (a) every person who is born in the territories subject to the jurisdiction of the Federation;

   (b) every person who is naturalized in accordance with Federal Law; and

   (c) every person, either of whose parents was, at the time of such person's birth, a citizen of the Federation; shall be a citizen of the Federation.

3. Further provisions governing the acquisition and termination of federal citizenship may be made by Federal Law.

Explanation - In this constitution, unless the context otherwise requires, "Federal Law" includes any existing Indian Law as in force within the territories subject to the jurisdiction of the Federation.

Thus in this definition a domicile in the country was essential to acquire

Indian citizenship. A foreigner was now required to be a resident for five years and no casual visitor’s child could be a citizen as it was required for him to be an ‘ordinary resident’ of the country. To meet all the queries, provision to clause 1 was provided. It was better to specify who would be citizen of the Indian Union at the date when the constitution came into force as in the constitution of the Irish Free State and to leave the law regarding nationality to be provided for by legislation by the Indian Union in accordance with the accepted principles of Private International Law. But public opinion outside was greatly agitated over the partition of the country and its effects, on the mode of acquiring Indian citizenship.1 Though the definition given by Sri Nehru avoided the possibility of a foreigner getting Indian citizenship easily without a domicile and without being an ordinary resident of the country; it also treated the Indians residing in the proposed Pakistan to be an alien.

Therefore, the Ad-Hoc Committee met again on the 12th July, 19472. The letter of Prof. Ghansyam J. Shivdasani was considered and the clause was redrafted. In the new definition it was not essential for those ‘who, or whose parents or either of whose parents, was or were born in the territories of the Federation’ to have a domicile in the country to acquire Indian citizenship but it was essential for them to be ‘subject to its jurisdiction.’ It might debar a large number of Indians living abroad from being Indian citizens. This draft was considered by the Provincial Constitution and Union Constitution Committees at a joint meeting held on the 18th July, 19473. It was found to be inadequate and the matter was referred back to the committee. The constitutional Adviser drafted the clause in the Draft Constitution of India published on the 22nd September, 19474 and that was further revised on the 7th October, 19475. The Drafting Committee redrafted it in the form which appeared in articles 5 and 6 of the Draft Constitutions which run as follows:8

---

2. Notes on the Provisions relating to citizenship through various stages of its consideration in the Constituent Assembly and its committees, Vide Papers In The President’s Secretariat.
3. Ibid
4. Papers In the President’s Secretariat
5. Ibid
5. At the date of commencement of this constitution -

(a) every person who or either of whose parents or any of whose grand-parents
    was born in the territory of India as defined in this Constitution and
    who has not made his permanent abode in any foreign State after the first
day of April, 1947; and

(b) every person who or either of whose parents or any of whose grand-parents
    was born in India as defined in the Government of India Act, 1935 (as
    originally enacted), or in Burma, Ceylon or Malaya and who has his domicile
    in the territory of India as defined in this constitution,
    shall be a citizen of India, provided that he has not acquired the cit-
    izenship of any foreign state before the date of commencement of this constitution.

Explanation - For the purposes of clause (b) of this article, a person shall be
deemed to have his domicile in the territory of India -

(i) if he would have had his domicile in such territory under Part II of
    the Indian Succession Act, 1925, had the provisions of that Part been
    applicable to him, or

(ii) if he has, before the date of commencement of this constitution, de-
    posited in the office of the District Magistrate a declaration in writing
    of his desire to acquire such domicile and has resided in the territory
    of India for at least one month before the date of the declaration.

6. Parliament may, by law, make further provision regarding the acquisition and
   termination of citizenship and all other matters relating thereto.

   Explaining the viewpoint, Dr. B. R. Ambedkar observed "The Committee has given
   anxious and prolonged consideration to the question of citizenship of the Union.
The Committee has thought it necessary that, in order to be a citizen of the Union
at its inception, a person must have some kind of territorial connection with the
Union whether by birth, or descent, or domicile. The committee doubts whether
it will be wise to admit as citizens those who, without any such connection with
the territory of India, may be prepared to swear allegiance to the Union; for if other States were to copy such a provision, we might have within the Union a large number of persons who, though born and permanently resident therein, would owe allegiance to a foreign state. The Committee has, however, kept in view the requirements of the large number of displaced persons who have had to migrate to India, within recent months, and has provided for them a specially easy mode of acquiring domicile and, thereby, citizenship. What they have to do (assuming that they or either of their parents or any of their grandparents were born in India or Pakistan) is -

(a) to declare before a District Magistrate in India that they desire to acquire a domicile in India; and

(b) to reside in India for at least a month before the declaration.¹

Difficulties in cases of foreigners and Indians residing abroad.—But this definition did not satisfy many and a large number of amendments were suggested. Justice Meredith² of the Patna High Court pointed out that "The Draft leaves the position of Europeans like myself who might wish to take out Indian Citizenship very uncertain. I suggest that some provisions for naturalization should be inserted in the constitution. I believe every country has provisions for naturalization in proper cases, and all security for fundamental rights under the constitution is provided only as regards citizens of India. There is no constitutional protection for persons permanently resident in the country or having their domicile therein who are not citizens. Moreover, citizenship appears to have been made an essential qualification for practically every appointment under the Union of India."

The All Burma Indian Congress³ also urged that every Indian resident in Burma

---

1. Draft Constitution of India - 1948 p. V.
2. Meeting to consider the Draft Constitution of India held on 10.4. 1948. Vide Papers In The President's Secretariat.
3. Ibid.
who was an Indian according to the pre-division period should have the option of choosing whether he would like to be the citizen of the Indian Union or of Pakistan and that the exercise of this option should not be hedged round by other qualifications. It further urged that the Government of India should accord the above stated right to those overseas Indians who were born in what is now known as the Pakistan territory and who would like to change over. It also urged that for those Indian resident in Burma who took up Burma citizenship and later wanted to re-acquire Indian citizenship, an easier process of re-acquisitioning of Indian citizenship might be prescribed.

The constitutional Adviser\(^1\) further pointed out that "clause (b) of this article leaves out persons who were born in Pondicherry, Goa, Chandernagore or other foreign territory in India or were born in South Africa, Fizi or other countries outside India but are domiciled in the territory of India as defined in the constitution. There is no good reason why such persons should be less favorably treated than those born in Pakistan or Burma. The words "who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) or in Burma; Ceylon or Malaya, and "may therefore be omitted from clause (6)." He also suggested that "Acquired" is slightly ambiguous. For avoiding doubt we may say "voluntarily acquired" instead of "acquired" in line 19 of page 4 of the Draft". The Drafting Committee accepted the redraft proposed above. The original draft together with the amendments recommended by the Drafting Committee were considered on the 10th and 11th of April, 1948 by a special committee consisting for the most part of certain members of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee. Accordingly article 5 was redrafted. \(^2\)

Note of the Ministry of External Affairs - Meanwhile the Indian States presented

1. Notes on Amendments to the Draft Constitution of India, pp. 5 and 6 - Vide Papers In the President's Secretariat.
2. Papers In the President's Secretariat, Note on the provision relating to citizenship through various stages of its consideration in the Constituent Assembly and its committees.
new problems and the President made an enquiry of the Constitutional Adviser as to how far the citizenship rules were applicable to States that were acceding and yet to accede in the Indian Union\(^1\). The Ministry of External Affairs also received a large number of memoranda including that of Sri R. Ramani, Advocate, Kuala Lumpur, Malaya and the advice of Sir B. N. Rau\(^2\) and that of Pandit Nehru was taken.\(^2\) Sri S. Dutt, I.C.S., Additional Secretary, Ministry of External Affairs, prepared the following note on citizenship clauses in the Draft Constitution of India: \(^3\)

"This note examines the citizenship clauses in the Draft Constitution of India (clauses 5 and 6) to see whether they are adequate to meet the requirements of all persons originating in territories included in India before August 15, 1947 and now living abroad, who are anxious to acquire Indian citizenship at the commencement of constitution or who would otherwise be without any citizenship. It also examines clause 5 with a view to seeing whether this clause makes it sufficiently easy for persons originating in Pakistan, who have permanently migrated to India, to acquire Indian citizenship on the date of commencement of the constitution.

2. Under clause 5, as it stands, every person living abroad himself or either of whose parents or any of whose grand-parents was born in the territory of India and who has not made his permanent abode in a foreign state, will be a citizen of India provided he has not acquired the citizenship of any foreign State before the date of commencement of the constitution. Countries within the Commonwealth are, possibly, not foreign states. In any case, most persons of Indian origin now living in oversea countries, who have not made their permanent abodes abroad, will automatically be Indian citizens. The reason is that at least one of their grand-parents must have been born in India. Only in the case of Fiji and British Guiana where Indians migrated more than 100 years ago it is possible that there is a small

1. Ibid, Correspondence with Sir B. N. Rau and Sri H. C. Mukherjee.
2. Vide Paper In The President’s Secretariat.
3. Ibid
number of persons of Indian origin whose grand-parents were born in those territories but whose great grand-parents were born in India. After discussion with Sir B. N. Rau it was decided by us not to press for a provision in the constitution for the Indian citizenship of such persons whose connection with India is so remote. Sir B. N. Rau had pointed out that in most countries citizenship law goes back only to grand-parents.

I do not advise that we should ask for the amendment of clauses 5 so as to bring in great grand-parents.

3. Next, we have to consider the cases of persons originating in the territory now included in Pakistan but living abroad, who have no intention of returning to Pakistan and who want to make their permanent homes in India. Such, for example, are persons originating in West Punjab now living in Burma, Egypt and Indonesia, whose homes in the West Punjab have been destroyed and all of whose relations have moved to India. Under draft clause 5, as it stands, any such person must return to India, submit a declaration of his intention to acquire Indian domicile, and reside here for at least a month before the date of the declaration. Such a requirement places these persons in a very difficult situation. Take Burma, for example, regulations for re-entry into Burma are so strict that once a person leaves that country, he cannot enter it again. It would not be fair to compel many thousands of persons, who have no houses left in Pakistan, to return immediately to India, leaving their business behind, merely to qualify for Indian citizenship. To meet their difficulties our Ambassador in Burma has suggested that a person who makes a declaration before the Ambassador of his intention to make India his home and takes an oath of allegiance to India, should be regarded as having fulfilled the requirements of Indian citizenship on the date of commencement of the Constitution. This suggestion was not acceptable to the Constitutional Adviser. In his view, the intention of Article 5 of the new constitution is that no person should, at the inception of the new constitution
be a citizen of India unless he is connected with the territory of India by birth, descent or domicile.

4. The matter was taken up by the Prime Minister himself with Sir B. N. Rau in January this year. Sir B. N. Rau pointed out the difficulties in the following terms:

"The main difficulty is that these persons have at present no territorial connection of any kind with India, that is to say with post-partition India. They were not born in India nor were any of their parents or grand-parents born in India, nor it would seem are they in a position even to visit India for a month and declare that they intend to make India their permanent abode. If they were connected with India in any of these ways, they would be qualified for Indian citizenship under the provisions of the new constitution, and there would be no problem. The problem arises because, in spite of having no present connection with India, they desire to become Indian citizens at once by some special process, e.g. by registration at the Indian Embassy at Rangoon coupled perhaps with an oath of allegiance to India. There are two difficulties here:

(i) Under international law, the power of a State to confer its nationality upon persons outside its territory is not unlimited, and the above suggestion to confer nationality by mere registration coupled with an oath of allegiance may be regarded as going beyond recognized limits.

(ii) Pakistan may say to us "Now that you are conferring Indian citizenship on persons by birth and descent belong to Pakistan and who do not belong even by domicile to India, we are free to do likewise. There are many Muslims in India who would like to become Pakistani citizens by registering with the Pakistan High Commissioner in India and taking an oath of allegiance to Pakistan." Of course, we may try to distinguish the two cases by pointing out that our action is limited to persons in Burma, but once we depart from a certain principle, it will not be easy to prevent other departures. In
these circumstances the most that can be done to meet the situation seems to be something on the following lines:

Let these persons make a declaration at the Indian Embassy in Rangoon that they intend to become citizens of India (by naturalization) and thereupon we may treat them for all purposes of protection as Indian Citizens. Pakistan may have no objection to this course. There was a law in the United States from 1918-1935 that a foreign seaman who had filed a declaration of his intention to become an American citizen was to be deemed for all purposes of protection to be an American citizen, although of course he did not actually become an American citizen until after completing naturalization."

5. In his reply of January 30, the Prime Minister pointed out that the examples which Sir B. N. Rau quoted did not really apply. Conditions created by the partition of India have no other parallel. The Prime Minister did not see any major difficulty in allowing the choice of Indian citizenship to Indian citizens overseas, but agreed that the choice should be given to people in Pakistan or India. A copy of this reply was forwarded by the Prime Minister to Dr. Ambedkar. The latter in his reply dated February 4, stated:

"I do not think that it would be impossible to allay the apprehension of Indians by making appropriate changes in the clauses regarding naturalization in the new Bill on the Indian Citizenship which we propose to promote in the near future....."

Apparently H. M. Law proposed to make a special provision for this category of persons not in the Draft Constitution but in a separate citizenship law.

6. We can not too much stress the need for making a special provision in the constitution to enable this class of Indians to qualify for citizenship at the commencement of the constitution. I suggest that we should press the suggestion of our ambassador in Burma on the appropriate committee of the Constituent Assembly.
7. In the third category come those persons living in Burma or Ceylon or other countries in the Commonwealth, who accept the citizenship of those countries but who want to retain the right of easy revision to Indian citizenship on retirement to India. A question of principle is involved. In the case of Ceylon we have undertaken to see that an Indian who accepts Ceylon citizenship ipso facto ceases to be Indian. We are, however, asked not for actual Indian citizenship but, if I may so express it, for potential Indian citizenship combined with, say, Ceylon citizenship. It is not necessary to discuss the merits of the issue. The conditions under which citizenship can be acquired in future will be governed by law to be made under Article 6 of the constitution. At the appropriate time it may be considered whether it would be necessary or desirable to make a special provision for the acquisition of Indian citizenship by any particular category of persons.

No action is needed now.

8. We now come to the cases of Indians living in Malaya who accept Malayan citizenship under the new Federation constitution of Malaya. Mr. Ramani, a well known Indian Advocate of Kaulalampur has submitted more than one memorandum with regard to this class of Indians. Under the constitution of Malayan Federation, a person who satisfies the prescribed residential test and who makes a declaration of permanent residence in Malaya and agrees to regard the Federation as his home and the object of his loyalty, will be regarded as a federal citizen. This provision of the Malayan constitution has not yet come into force. Mr. Ramani's apprehension is that if in fact it comes into force before the coming into effect of the Indian Constitution, then under clause 5(b) such a person will be disqualified for Indian citizenship. Ramani's point is that the Malayan Federal citizenship is not synonymous with Malayan nationality. Persons of all nationalities residing in Malaya, Chinese, British and Indians, can acquire Malayan citizenship in the manner provided in the Constitution without losing their nationality.
Thus a Chinese who qualifies and opts for Malayan citizenship does not cease to be Chinese on that account. Similarly, a person of British nationality will not cease to be British merely by reason of his acceptance of Malayan citizenship. Mr. Ramani's contention is that the Indian Constitution should not automatically disqualify a person of Indian origin, who accepts the limited Malayan Citizenship, from becoming an Indian citizen at the commencement of the New constitution. Otherwise while he could be debarred from Indian citizenship, he would not acquire the full citizenship (nationality) of any other country.

9. Mr. Ramani apparently proceeds on the assumption that an Indian accepting the citizenship of Malaya accepts the citizenship of a foreign state. So long as India is in the Commonwealth, Malaya will not be a foreign state. A person originating in India, as constituted now, will, therefore, acquire Indian citizenship under clause 5(b), even if he has already accepted Malayan citizenship.

10. Difficulty will arise only in respect of a person originating in a territory now included in Pakistan but accepting Malayan citizenship. Acceptance of Malayan citizenship will mean that he has his domicile in that country and, therefore, under sub-clause (b) of clause 5 such a person could not acquire Indian citizenship, even if he would make the declaration and take the oath of allegiance suggested in para 6. It should be possible, however, to obviate this difficulty by a suitable proviso to sub-clause (b).

11. Persons originating in territory now included in Pakistan present their own problem. There are two categories:

(a) Those who continue to reside in Pakistan, but wish to acquire Indian citizenship; and

(b) Those who will have permanently migrated to Indian by the date of commencement of the constitution.

Persons in category (a) can not for obvious reasons be admitted to Indian citizenship automatically.

For persons in category (b) the condition prescribed in clause (ii) of
'Explanation' in draft article 5 is sufficiently easy. This condition need not be further relaxed.

12. To summarise:

(i) No reference to great grand-parents need be made in clause 5.

(ii) Special provision should be made in the constitution to enable a person originating in a territory now included in Pakistan and living abroad (but not in Pakistan) to acquire Indian citizenship at the commencement of the constitution, without requiring him to reside for a prescribed period in the territory of India. One suggestion is that he should declare in writing before the Indian Ambassador, Minister or Representative in an overseas country, his intention of making India his permanent home and take an oath of allegiance to India.

(iii) Persons originating in India but living abroad in a commonwealth country will acquire the citizenship of India under clause 5 (a) even if he has already accepted the citizenship of his country of residence. Mr. Ramani's apprehension that Indians acquiring Federal citizenship of Malaya will be debarred from acquiring Indian citizenship is unfounded so far as persons originating in India are concerned - clause 5(a). But persons originating in Pakistan and accepting Malayan citizenship will be debarred under sub-clause (b) of clause 5 in similar circumstances. If any safeguard is to be provided for them, a suitable proviso can be added to sub-clause (b) of clause 5.

13. One more point. As Ceylon is not a foreign country, persons originating in India will not be debarred from Indian citizenship even if they accept Ceylonese citizenship - clause 5(a). We are committed to preventing double citizenship of Indians living in Ceylon. This can be done by law to be enacted by Parliament under the New Constitution - clause 6. At this stage the problem need not worry us.
Various suggestions from the public.- This was also discussed in the West Bengal Legislative Assembly and it was suggested that in place of clause (1) of the Explanation be inserted the proviso in Sections 10 of the Indian Succession Act, 1925, that a man acquires a new domicile by taking up the fixed habitation in a country which is not that of his domicile of origin. Thus the object of the amendment was to omit the reference to the Indian Succession Act, 1925, from clause (i) of the Explanation to article (5). The Constitutional Adviser, however, pointed out that "If the present amendment is accepted then the provisions in Part II of the Indian Succession Act, 1925, that the domicile of a minor follows the domicile of the parent or that the wife's domicile during her marriage follows the domicile of her husband will not apply for the purpose of clause (b) of article 5." The Assembly further pointed out that the District Magistrate would not be easily approachable for the purpose of depositing the declarations referred to in clause (ii) of article 5. It was, therefore, suggested that some other officers also be appointed by the Provincial Government for the purpose. The Constitutional Advisor agreed to the suggestion and himself suggested that "In clause (ii) of the Explanation to article 5, after the words "District Magistrate" the words "of such offices as may be authorised in writing in that behalf by the District Magistrate" be inserted."

The Editor of the Indian Law Review and some other members of the Calcutta Bar did not like that domicile should be a condition precedent to acquiring Indian citizenship. It was very hard for Pakistan-born Indian who wanted to be citizens of India. It was also a subject for criticism that persons who acquired foreign citizenship by operation of the law of a foreign state independently of their volition or choice were also denied Indian citizenship. They were also not happy

2. Vide Papers In The President's Secretariat.
with the reference to the Indian Succession Act in the Explanation to this article. The constitution Act should be self-contained. Sri Atul Chandra Gupta, Advocate, Calcutta High Court was also opposed to it as the Indian Succession Act, 1925, was liable to be amended or repealed any day. The constitutional Adviser pointed out that it was a matter of policy that a person must have some kind of territorial connection with the Union, whether by birth or descent or domicile. The other objection had already been met by the insertion of the word "voluntarily" before the word "acquired" in the revised draft of article 5 recommended by the Drafting Committee. But the reference to the Indian Succession Act, 1925, was necessary to avoid the repetition of a large number of provisions with regard to domicile contained in Part II of that Article. Such a reference was not altogether uncommon in a constitution Act. Even if the Indian succession Act, 1925 was repealed, it would not be difficult to find out what the provisions thereof were on the date of commencement of the Constitution.

Redrafting of the clause - In view of the various suggestions Dr. B. R. Ambedkar moved that for articles 5 and 6, the following articles be substituted:

1. At the date of the commencement of this constitution, every person who has domicile in the territory of India and

(a) who was born in the territory of India; or
(b) either of whose parents was born in the territory of India; or
(c) who has been ordinarily resident in the territories of India for not less than five years immediately preceding the date of such commencement,

shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

5 A. Notwithstanding anything contained in article 5 of this constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be citizen of India at the date of commencement of this

Constitution if-

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has ordinarily resided within the territory of India since the date of his migration, and

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him thereafter to such officer before the date of commencement of this constitution in the form prescribed for the purpose by that Government;

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of this application.

5 A A. Notwithstanding anything contained in articles 5 and 5 A of this Constitution a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purpose of clause (b) of article 5 A of this constitution be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

5 B. Notwithstanding anything contained in articles 5 and 5 A of this Constitution, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted)
and who is ordinarily residing in any territory outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after the commencement of this constitution, in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India.

5 C. Every person who is a citizen of India under any of the foregoing provisions of this part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

6. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

Analysis of new clause — Thus the Drafting Committee provided for five different classes of people who could become citizens on the date on which the constitution commenced namely,

(1) Persons domiciled in India and born in India; in other words, those who form the bulk of the population of India as defined by this Constitution.

(2) Persons who are domiciled in India but who are not born in India but who have resided in India. For instance persons who are the subjects of the Portuguese settlements in India or the French settlements in India like Chandernagore, Pondicherry, or the Iranians for the matter of that who have come from Persia and although they are not born here, they have resided for a long time and undoubtedly have the intention of becoming the citizens of India.

(3) Persons who are residents in India but who have migrated to Pakistan.

(4) Persons resident in Pakistan and who have migrated to India; and

(5) Persons who or whose parents are born in India but are residing outside India.
Thereby single citizenship was established in India as against dual citizenship as prevalent in U.S.A.

Criticism in the Constituent Assembly - Dr. P. S. Deshmukh, however, criticised that this definition would make Indian citizenship the cheapest on earth. In his own words "the first requirement according to this article is domicile. After that all that is necessary according to (a) is that he should be born in the territory of India. This has no relationship whatsoever to the parentage. A couple may be travelling in an aeroplane which halts at the port of Bombay for a couple of hours and if the lady happens to deliver a child there, irrespective of the nationality of the parents, the child would be entitled to be a citizen of India. Indian citizenship ought not to be made so very easy and cheap". He was also very critical of sub-clause (c) whereby any person "who has been ordinarily resident in the territory of India for not less than five years" could be an Indian citizen. Here there had been no reference to parentage, it had no reference to the nationality or the country to which they belonged, it had no reference to the purpose for which the person resided in this country for five years. In the short duration of five years it was very difficult to find out whether a person was a fifth columnist who had come here with the intention of sabotaging Indian independence. He, therefore, suggested that the period should be twelve years instead of five. Thus Dr. P. S. Deshmukh wanted that birth as well as race should determine Indian citizenship. He thus suggested that in article 5A after the words 'territory of India' the words 'of Indian parentage' be inserted. He was bold enough to propose that every person who is a Hindu or a Sikh and is not a citizen of any other State shall be entitled to be a citizen of India. "We have seen the formation and establishment of Pakistan. Why was it established? It was established because the Muslims claimed that they must have home of their own and a country of their own.

Here we are an entire nation with a history of thousands of years and we are
going to discard it, in spite of the fact that neither the Hindu nor the Sikh has
any other place in the wide world to go to. By the mere fact that he is a Hindu
or a Sikh, he should get Indian citizenship because it is this one circumstance
that makes him disliked others...... If the Muslims want an exclusive place for
themselves called Pakistan, why should not Hindus and Sikhs have India as their
home? Thus he suggested that for the proposed article 5, the following be sub-
stituted:

"5 (1) Every person residing in India -
(a) who is born of Indian parents; or
(b) who is naturalized under the law of naturalisation; and
(ii) Every person who is a Hindu or a Sikh by religion and is not a citizen
of any other State, wherever he resides
shall be entitled to be a citizen of India"²

Mr. Naziruddin Ahmad³ also supported Dr. Deshmukh that the articles proposed
by Dr. Ambedkar would not only lead to the introduction of 'cheap' citizenship
but it was 'needlessly cumbersome'. Prof. K. T. Shah also endorsed the view 'that
the privilege of citizenship of India should not be regarded as something very
commonplace affair, cheap and easy."⁴ He, therefore, suggested to restrict the
privilege of citizenship by birth only to the second generation. But if it was
to be taken up to the third generation it should be restricted only on the
parental side. Pandit Thakurdas Bhargava was dissatisfied with sub-clause (c)
of Article 5. He observed "In the case of persons who have been living here
in this country, the mere fact of their stay for five years in this country should

2. Ibid. p. 352.
3. Ibid. p. 360.
4. Ibid. p. 369.
not be enough, if other conditions relating to citizenship by naturalization are
waived in their favor. My humble submission is that if you study the law of
naturalization you will come to the conclusion that a person who even acquires
the right of citizenship by naturalization has a liability to fulfill certain con-
ditions. He has to perform certain obligations and be a man of good character.
All those conditions are being waived and he is regarded as being a citizen of this
country. It is, therefore, only fair that we should provide for a residence of
at least ten years to show that as a matter of fact a person means to stay in
India. Otherwise there are many persons who have been in the service of the crown
and have stayed here for a good time. They might now prefer to stay here for reasons
best known to themselves. The difficulty in my way is that I do not believe
that those who come from Pakistan and other countries propose to stay here only
for the love of the country. If they stay for that purpose, I have no objection
that they become citizens of this country. But I know very well that there are
a good many people who have not come to this country, or are not staying in this
country with this object. In their case I would like to provide ten years instead
of five years which should be regarded as indispensable in the interests of caution.1

Reply to the Debate - But Dr. B. R. Ambedkar pointed out "that our citizenship
is no cheaper than would have been made by laws laid down by other countries."2
Analysing it further Sri Alladi Krishnaswami Ayyar pointed out 'that our article
is much stricter, for example, than the constitution of the United States. Under
the constitution of the United States he would be treated as a citizen of the United
States irrespective of color or race. Difficulty has arisen only with regard to
naturalization law. We have added a further qualification viz. that the person
must have his permanent home in India. I am paraphrasing the word 'domicile' into
'permanent home' as a convenient phrase."3 He further observed that it would be

2. Ibid. p. 422.
3. Ibid. p. 402.
too hard to lengthen the period of domicile in India by ten or twelve years for foreigners keeping in view the outlying tracts in India like Goa, French Settlement and other places from where people had come to India and had settled down in this country, regarding India as a permanent home, and they had contributed to the richness of the life in this country.\(^1\) Regarding the amendment of Dr. Deshmukh that every Hindu or Sikh should be an Indian citizen, he observed "We are plighted to the principles of a secular state. We may make a distinction between people who have voluntarily and deliberately chosen another country as their homes and those who want to retain their connection with this country. But we can not on any racial or religious or other grounds make a distinction between one kind of persons and another, or one sect of persons and another set of persons, having regard to our commitments and the formulation of our policy on various occasions."\(^2\) Thus all these amendments were negatived.

Why persons returning from Pakistan be made Indian citizens? Many members strongly objected to the proviso of clause 5AA Sri Jaspat Roy Kappor\(^3\) said that those persons who went away to Pakistan went definitely with the intention of settling down there permanently. They gave up their loyalty to this country and they gave their allegiance to the new country of Pakistan. Their migration was, therefore, complete and absolute and, therefore, the right of citizenship which they had before their migration was eliminated altogether. They should be treated as foreigners and required to stay here for five years before acquiring Indian citizenship. He also pointed out that it had certain financial implications as well. The question would arise as to whether in regard to the property which such persons had left at the time of migration they would be entitled to get them back along

---

1. Ibid, p. 402-403.
2. Ibid, p. 401.
with their citizenship after they were allowed to come back and resettle here. Prof. K. T. Shah also agreed with Sri Jaspat Roy Kapoo that citizenship should not be conferred so easily on persons who first migrated to Pakistan and then came back. He suggested that they should 'produce such evidence, documentary or otherwise, as may be deemed necessary to prove his intention to be domiciled in India and reside permanently here.' Sardar Bhupinder Singh Mank also opposed the idea of granting citizenship on those who once violated the integrity of India and went to Pakistan and later on intended to come back. He, therefore, moved that the proviso to article 5AA be deleted. Pandit Thakurdas Bhargava also opposed this liberal attitude. He further pointed out "that after partition as many as three times the Hindu refugees from East Bengal, Muslims have migrated to Assam. If a Muslim comes to India and bears allegiance to India and loves India as we love her, I have nothing but love for that man. But even after the Partition for reasons best known to them many Muslims have come to Assam with a view to making a Muslim majority in that province for election purposes and not to live in Assam as citizens of India.... Those who have come here on account of disturbances there, certainly must get an asylum in India. If any nationalist Musselman who is afraid of the Muslims of East Pakistan or West Pakistan comes to India, he certainly should be welcome.... Therefore, the first condition of migration would be that he comes here "on account of civil disturbances or the fear of such disturbances." It was also moved by Sri Jaspat Roy Kapoo and Mr. Rohini Kumar Choudhury expressed similar apprehensions. But Sri Jawaharlal Nehru pointed out that the Government of India had permitted a certain number of people to come and settle down in India after having been satisfied that they wanted to take their

1. Ibid, p. 369.
2. Ibid, pp. 391 - 393.
abode in India and in no other country, and that they looked upon this country as their own. Having given that assurance, it would be gross injustice on the part of the Government of India to say that they were not entitled to the rights of citizenship of India. So the proviso to 5A safeguarded the dignity, the honor and the plighted word of the Government of India by saying that such a person would be entitled to the benefits of citizenship. Sri N. Gopalaswami Ayyanger also explained that these persons would not be automatically registered as citizens. They would have to apply to authorities who would take the full history of each of these persons into consideration before they granted a recognition of citizenship. Regarding the apprehension of Mr. Rohini Kumar Chaudhury, Dr. B. R. Ambedkar said that it was utterly unfounded. The matter could be taken up by Parliament under Article 6. If Parliament was convinced that undesirable elements had entered into Assam, it was competent to pass suitable legislation.

Prof. K. T. Shah had also raised the point that there ought to be positive prohibition in these articles limiting Parliament's authority to make law under article 6 not to give citizenship to the residents of those countries who denied citizenship to Indians resident there. But Dr. Ambedkar replied that the matter might be left for Parliament to decide in accordance with the circumstances as and when they might arise.

The final passage of the Clause - All the amendments were, therefore, negatived except that of Dr. B. R. Ambedkar that was adopted. Thus the question of citizenship had been before the Assembly since 1947. It gave much headache to the Drafting Committee. A large number of drafts were prepared and destroyed and at

1. Ibid, p. 413.
4. Ibid, p. 422.
5. Ibid, p. 430.
last a decision was taken. Citizenship is always difficult to define. It was all the more difficult for the framers of the Indian Constitution due to the problems created by the partition of the country as well as the presence of a large number of Indians living abroad. Even in the final debate a large number of amendments were moved. But after the masterly exposition of Sri Jawaharlal Nehru, Sri N. Gopalaswamy Ayyangar, Sri Alladi Krishnaswami Ayyar and Dr. B. R. Ambedkar, all oppositions died down. Even Prof. K. T. Shah¹ for whom it was "not customary... to throw many bouquets at the learned draftsman of this constitution", offered his sincere congratulations to the draftsman for the great erudition and mastery in a very complicated subject that he had shown. Indeed, in the midst of very serious difficulties, he had tried to keep a balanced judgement on an admittedly very difficult subject where feelings run high.